IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2170 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MELA CHHAGAN BHABHORE

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2170 of 2003

MS KRISHNA U MISHRA for Petitioner No. 1

MR AMRISH K PANDYA for Petitioner No. 1

MR KP RAWAL ASSTT GOVERNMENT PLEADER for Respondent No. 1-3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 13/06/2003

ORAL JUDGEMENT

#. Heard learned advocate Ms.K.U.Mishra appearing on behalf of the petitioner and learned AGP Mr.K.P.Rawal

for respondents State.

Rule, in the present petition, issued on 7th March, 2003 making it returnable after a period of six weeks.

#. By way of this petition, the petitioner has challenged the order of detention dated 24th January, 2003 passed by the Commissioner of Police, Ahmedabad City under Section 3[1] of the PASA Act. Pursuant to the impugned detention order, the detenu has been detained in Porbandar District Jail as Class-II detenu.

#. Looking to the grounds of detention passed against the present petitioner, in all, four offences under the provisions of IPC, have been registered on dates 11th August, 2002, 30th September, 2002, 11th November, 2002 and 6th January, 2003. The statement of the secret witnesses recorded on 18th January, 2003 and 19th January, 2003. The said statements have been verified by the detaining authority on 22nd January, 2003 and thereafter, the order of detention has been passed by the detaining authority on 24th January, 2003. Affidavit-in-reply has been filed by the detaining authority as well as by the State Government, which are on record of this case and a copy thereof has been supplied to the present petitioner.

#. Learned advocate Ms.K.U.Mishra appearing on behalf of the petitioner has raised contention in para-10 of the petition that at the time when the order of detention has been passed, the petitioner was in judicial custody. She submitted that in connection with all four offences registered against the petitioner, the petitioner came to be arrested on 6th, 9th, 12th and 16th January, 2003 in respect of forth, third, second and first offence respectively. However, she stated at bar that for none of the offence, the petitioner has filed bail application before any of the competent Court of law. Therefore, she submitted that once the petitioner was in judicial custody and no bail application has been filed by the petitioner, then it was the duty of the detaining authority to consider the question, whether is there any likelihood to file any bail application by the petitioner and in case, if any such bail application is filed, whether it is likely to be granted in favour of the petitioner by the competent criminal court. However, it is her contention that as such, this aspect has not been considered, nor examined by the detaining authority for arriving at subjective satisfaction and therefore, the order of detention is vitiated on this ground only.

However, Ms.Mishra, learned advocate has relied on decisions of this Court in Special Civil Application Nos.2866, 2867 and 2868 of 2003 decided on 10th June, 2003.

#. Learned AGP Mr.K.P.Rawal for the respondents has submitted that the detaining authority has filed detailed affidavit and specific answer to the contention so raised in para-10, is given in para-10 of the reply to the effect that as per the full bench decision of this Court, wherein it is held that the detaining authority is not under obligation to pursue the remedy available under Section 437[5] of the Criminal Procedure Code for cancelation of bail. If said reply of the detaining authority is taken into consideration as it is, then also, it can be said that this specific reply is nothing but clear non application of mind on the part of the detaining authority inasmuch as from the grounds of detention itself, it is very clear that in all four offences, the petitioner came to be arrested between 6th to 16th January, 2003 while the petitioner was in judicial custody. There is nothing on record before the detaining authority that any bail application was moved by the petitioner before the competent Court of Law in respect of any of the offences mentioned in the grounds of detention. It may be appreciated that there is no bail application at all filed by the petitioner and therefore, where is a question of cancellation of bail to adopt lesser drastic remedy at the ends of the detaining authority and this is nothing but clear non application of mind on the part of the detaining authority. Therefore, considering the entire records produced by the petitioner including the grounds of detention and the statements of the secret witnesses as well as the reply filed by the detaining authority, so also, by the State Government, according to my opinion, the contention which has been raised by the learned advocate Ms.Mishra is squarely covered by the decision of this Court rendered in Special Civil Application Nos.2866, 2867 and 2868 /2003 dated 10th June, 2003 wherein this Court has examined this question relying upon the decision of the Apex Court that it is the duty of the detaining authority to examine the aspect whether there is any likelihood to file any bail application by the detenu in connection with registered offences and in case, if bail application is filed, even then, there is any possibility to grant bail by the competent court. These aspects have been clearly ignored by the detaining authority and not at all examined by the detaining authority looking to the facts of the present case. Therefore, the decision of this Court rendered in the matters referred to above squarely

cover the contention and controversy raised in this petition and resultantly, the detention order is required to be quashed and set aside.

#. In the result, present petition succeeds. The order of detention dated 24th January, 2003 passed by the Commissioner of Police, Ahmedabad City is vitiated and the same is quashed and set aside. The detenu - present petitioner - MELA CHHAGAN BHABHORE who has been detained at Porbandar District Jail is ordered to be set at liberty forthwith if not required in any other case.

Rule is made absolute accordingly.

Direct Service permitted.

Date : 13-6-2003 [H.K.Rathod, J.]

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